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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,810	03/04/2005	Nicholas James Midgley	GB920020049US1	8811
26502	7590	03/15/2010	EXAMINER	
IBM CORPORATION IPLAW SHCB/40-3 1701 NORTH STREET ENDICOTT, NY 13760			TAHA, SHAQ	
			ART UNIT	PAPER NUMBER
			2446	
			NOTIFICATION DATE	DELIVERY MODE
			03/15/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

endiplaw@us.ibm.com

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/526,810</p>	<p>Applicant(s) MIDGLEY, NICHOLAS JAMES</p>	
	<p>Examiner SHAQ TAHA</p>	<p>Art Unit 2446</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 February 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 24 February 2010. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation.
12. ☒ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). 11/30/2009,12/29/2009
13. ☐ Other: _____.

/Jeffrey Pwu/
Supervisory Patent Examiner, Art Unit 2446

The applicant argues that Ronnenburg et al. fails to teach determining that first application server is functional but has reached upper level of utilization.

The applicant argues that Ronnenburg et al. that doesn't teach a real data source server.

The applicant argues that a real management server selects a real data source server for a real application server added to the pool and Ronnenburg doesn't teach sending connection settings for the real data source server to the additional real application server

The examiner submits that the applicant invention is directed to a management server that receives performance data regarding an application server and another source server in the pool, and based on the application server and data source server performance a new application server is added to the pool of servers if the first application server reached an upper level of utilization which means if it busy. Claim 63 is unclear, wherein the first paragraph of the claim cites the additional application server having an application installed therein, so it is unclear if the server is the same real application server or a different one.

Regarding Ronnenburg that a server in a pool of servers maintains status of two other servers wherein the first server is a real application server and the second server is data source server. Maintaining the status refers to sending reports regarding the performance of the servers. Once the server that maintains the status of the two servers which is management server determines that one of the two servers is down because of too much utilization the management server adds a new server to the pool. Wherein one of the two servers is a data source server that provides data to the real application server once it is allocated to the pool of servers. Wherein the new real application server once allocated to pool it sends connection settings because without sending connection setting the new application server can not be added to the pool. Regarding that a server is functional but has reached an upper level of utilization, this server is removed from the pool and a new one is added to the pool regardless if it is functional or not, but a secondary reference was added which is Overton et al. that teaches data is transferred to another server in the pool if the first server has reached an upper level of utilization. The claims in view of the prior art of record using the broadest interpretations are not allowable. the examiner recommends an interview with the applicant.